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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION NO. 339 of 1996

with

SPECIAL CRIMINAL APPLICATION NO. 346 OF 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? - No
2. To be referred to the Reporter or not? - No
3. Whether Their Lordships wish to see the fair copy of the judgement? - No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? - No
5. Whether it is to be circulated to the Civil Judge?
- No

DAUD HARUN BHANDELA

Versus

STATE OF GUJARAT

and

GANDUBHAI KANABHAI PATEL

Versus

STATE OF GUJARAT & ORS.

Appearance:

MRS SHARMA with MR.JAYESH BHAIKAVIA, for the petitioners
MR ANAND, PUBLIC PROSECUTOR with MR UMESH
TRIVEDI, ADDL. PUBLIC PROSECUTOR, for Respondent No. 1
SERVED for Respondent No. 2, 3

CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 07/10/96

COMMON ORAL JUDGEMENT

These are the two proceedings praying for early release, on the ground that, the amended provisions contained in Section 433-A of the Code of Criminal Procedure, 1974 are not attracted and that the release from the prison should be governed under the legal position which was obtainable before the above said amended provisions came into force.

Learned Counsels Mrs. Sharma and Mr. Jayesh Bhairavia, who had assisted me, have placed reliance upon the Supreme Court pronouncement in the case of MARU RAM, BHIVANA RAM ETC., SHANKAR ETC., KRISHNA ETC., RAGHUBIR SINGH, RAMPUJA SINGH, NIRBHAI SINGH, BALKRISHNAN GUPTA, VENY SINGH, BABULAL GAUTAM, OM PRAKASH, NAGABHUSHANAM PATNAIK, RAGHUNATH SINGH, MUNSHI RAM AND ANOTHER, FAQIR SINGH, JANARDHAN AND OTHERS, SUNDER RAM ETC., HARMAT ALI ETC., GOVIND GOWDA ETC., RAM PAL AND OTHERS, BANT SINGH AND OTHERS, PETITIONERS v. UNION OF INDIA AND OTHERS ETC., RESPONDENTS, AIR 1980 S.C. P.2147. The principle laid down by this pronouncement of the Apex Court is that, every person who has been convicted by the sentencing Court, before December 18, 1978, shall be entitled to the benefits accruing to him from the Remission Scheme or short sentencing projects as if Section 433-A did not stand in his way. The pronouncement also makes it abundantly clear that, similarly, even if the Appellate Court reverses an earlier acquittal rendered before Section 433-A came into force, but allows the appeal and convicts the accused after Section 433-A came into force, such persons will also be entitled to the benefit of the Remission system prevailing prior to coming into force of Section 433-A. It has been pointed out that, when a person is convicted in appeal, it follows that the Appellate Court has exercised its power in the place of the original Court and the guilt, conviction and sentence must be substituted for and shall have retroactive effect from the date of judgment of the trial Court.

When the two cases on hand are examined, in view of the said legal position settled by the Supreme Court, it is clear that the petitioner Daud Harun in Special Criminal Application No.339 of 1996 would be getting the benefit of the above said Supreme Court pronouncement. According to him, he was acquitted under the orders dated November 23, 1977 in Sessions Case No.14 of 1977 pronounced by the learned Additional Sessions Judge, Jamnagar. The said orders of acquittal came to be

challenged by the State, by filing Criminal Appeal No.191 of 1978. This Court had convicted the prisoner, vide judgment dated April 29, 1980. His case is that, regard being had to the pronouncement of the Apex Court in the case of MARU RAM (supra), he would be entitled to the Remission Scheme. His case requires to be accepted because, though he came to be convicted in the year 1980, the earlier acquittal orders are in the year 1977. Moreover, as the Supreme Court makes it abundantly clear, the relevant date would be, of course, December 18, 1978, but the Supreme Court pronouncement says that, as the conviction by the Appellate Court stands substituted for the earlier acquittal orders, the prisoner would be entitled to Remission Scheme or short sentencing scheme as they are, or would be in vogue.

So far as the other case, namely, Special Criminal Application No. 346 of 1996 is concerned, it requires to be appreciated that, prisoner Gandubhai Patel would not be entitled to the benefit resulting from the above said Supreme Court pronouncement. This is so, because according to his own version in the petition, he came to be convicted for the commission of the offence punishable under Section 302 of IPC, at the hands of learned Additional Sessions Judge, Gondal, under the orders dated 31st March 1979. Looking to what has been said by the Supreme Court in the said decision, as he has been convicted after December 18, 1978 for the first time, he would not be entitled to the benefit of the said pronouncement of the Supreme Court. His petition, therefore, requires to be dismissed.

The net result is that, the petition filed by prisoner Daud Harun succeeds and the same requires to be allowed. The rule requires to be made absolute to the said extent and it is ordered accordingly. So far as the petition of Gandubhai is concerned, it fails and the same requires to be dismissed. The notice in that case shall stand discharged.

The Registry is requested to transmit the copies of the present orders not only to the prisoner, but to the Jail authorities, with a request to do the needful in the matter of Daud Harun. The Jail authorities are further requested to submit a report to this Court regarding the action taken by them in respect of the said prisoner.

Both these petition stand disposed of with the above said orders.

Before parting, I should place on record the appreciation for the amicus services rendered by learned Counsels Mrs.Sharma and Mr.Jayesh Bhairavya.
